

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 524/Kol/2023**  
**Assessment Year: 2018-19**

<b>G.S. Atwal &amp; Co. (Engg.) Pvt. Ltd.</b> 4B, Little Russell Street Kolkata - 700071 <b>[PAN : AABCG0816E]</b>	Vs	<b>Pr. Commissioner of Income Tax - 2, Kolkata</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Soumitra Choudhury, A/R
Revenue by :	Shri S. Datta, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 14/12/2023  
घोषणा की तारीख /Date of Pronouncement: 22/04/2024

**आदेश/ORDER**

**PER SHRI RAJESH KUMAR, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the Principal Commissioner of Income Tax, Kolkata -2, [hereinafter the "ld. Pr. CIT"] dt. 29/03/2023, passed u/s 263 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2018-19.

2. The common issue raised in the various grounds of appeal is against invalid exercise of jurisdiction u/s 263 of the Act thereby passing revisionary order u/s 263 of the Act dt. 29/03/2023, setting aside and revising the assessment framed u/s 143(3)/143(3A) & (3B) of the Act dt. 29/03/2021.

3. Facts in brief are that the assessee filed its original return of income on 19/09/2018 declaring total loss of Rs.4,24,51,417/-. Subsequently, the return was revised on 23/09/2019 declaring total loss

of Rs.3,59,34,557/- under the normal provisions and book profit at Rs.1,29,489.40/- u/s 115JB of the Act. The case of the assessee was selected for scrutiny and assessment u/s 143(3) of the Act was framed assessing total loss at Rs. 1,42,34,311/- vide order dt. 29/03/2021. The ld. Pr. CIT, upon examination of the assessment records, observed that the order passed u/s 143(3) of the Act dt. 29/03/2021 is *prima facie* erroneous and prejudicial to the interest of the revenue, on the ground that the assessee has revised the return of income reducing the amount of loss declared from Rs.4,24,51,472/- to Rs. 3,59,34,557/-/- and also filed revised computation wherein net profit in the profit and loss account is Rs. 71,59,839/- instead of Rs. 8,21,179/- as shown in the profit and loss account for the impugned financial year. The ld. Pr. CIT observed that the assessee has paid MAT at Rs. 8,21,179/- instead on the revised net profit of Rs.71,59,839/- and accordingly, the book profit has been short assessed u/s 115JB thereby rendering the assessment so framed, as erroneous and prejudicial to the interest of the revenue. Accordingly, a notice u/s 263 of the Act was issued on 13/02/2023 giving the showcause to the assessee as to why the assessment should not be set aside and revised for the aforesaid reasons, which was duly replied by the assessee. Finally, the ld. Pr. CIT, after taking into account, the reply of the assessee, set aside the assessment order and directed the Assessing Officer to decide the same afresh after examining the reply of the assessee and its books of accounts.

4. After hearing rival contentions and perusing the material on record, we observe that the observations of the ld. Pr. CIT as to the assessment order passed u/s 143(3) of the Act dt. 29/03/2021 being

erroneous and prejudicial to the interest of the revenue appears to be incorrect as the Assessing Officer has correctly brought to tax the MAT u/s 115JB of the Act showing book profit of Rs. /-. We note that even the revised computation is filed by the assessee upon revision of the ITR and net profit has been show in the P&L at Rs. 71,59,839/-. We further notice from the table extracted at page no. 3 of the revisionary order which showed that the assessee has reconciled business loss and unabsorbed appreciation while calculating the book profit u/s 115JB of the Act, the allowance has to be made in respect of business loss or unabsorbed deprecation whichever is less, so even if we take up the contentions of the ld. Pr. CIT as correct for the time being, even then, the books profit as computed by the Assessing Officer has not caused any prejudice to the revenue and the assumption of jurisdiction u/s 263 of the Act is invalid as the conditions for invoking the jurisdiction are not fulfilled. Taking into account these facts and circumstances, we are inclined to hold that the order passed by the ld. Pr. CIT is without jurisdiction as the assessment framed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue.

5. We draw strength from the decision of the Hon'ble Apex court in Malabar Industrial Co. Ltd. Vs CIT 243 ITR 83(SC) wherein the Hon'ble Court has held that the twin condition has to be satisfied and even if one of the conditions i.e., erroneous and prejudicial to the interest of the revenue, then the revisionary jurisdiction are bad in law. We notice that in the present case, the assessment so framed is neither prejudicial nor

erroneous to the interest of the revenue and, therefore, the jurisdiction has been wrongly exercised by the Id. Pr. CIT.

6. We observe that the Assessing Officer is a quasi judicial authority and in the instant case, the Assessing Officer has taken view which is correct as per the facts available on record and the jurisdiction u/s 263 of the Act cannot be invoked by the Id. Pr. CIT merely on the ground that the view taken by the Assessing Officer is not acceptable to the Id. Pr. CIT and he wishes to substitute his view in place of the Assessing Officer's view as has been held by the Honble Bombay High Court in *Commissioner Of Income-Tax vs Gabriel India Ltd. reported in [1993]203ITR108(BOM)*. We note that the Id Pr. CIT has not recorded any objective finding on the basis of records before him as to how the order passed by the Assessing Officer is wrong and the said view is in conformity with the ratio laid down by Hon'ble Delhi High Court in *ITO vs. DG Housing Projects Limited reported in [2012] 343 ITR 329 (Del.)*

7. Considering the above facts and the ration of law laid down by various Hon'ble Courts, we quash the revisionary proceedings u/s 263 of the Act and the assessment order dt. 29/03/2021 is restored.

8. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 22<sup>nd</sup> April, 2024 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated 22/04/2024

*\*SC Sp/2*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**